

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 18-25306-B-7
)
 RIZAL JUCO GUEVARRA,) DC No. BHS-4
)
)
 Debtor(s).)
)

**MEMORANDUM AND ORDER SUSTAINING TRUSTEE'S OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTION**

Introduction

The court has before it the chapter 7 trustee's objection to debtor Rizval Guevarra's claim of an exemption in proceeds from the sale of real property. A response to the objection and a declaration in support of the objection were filed. For the reasons explained below, the trustee's objection will be sustained and the debtor's claim of exemption disallowed.

The court has reviewed the objection, response, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this case. See Fed. R. Evid. 201(c)(1).

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure “until further notice” due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). The continued hearing on June 2, 2020, at 9:30 a.m.

1 will be vacated.

2 Findings of fact and conclusions of law are set forth below.
3 See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

4
5 Background

6 The trustee's objection arises out of real property located
7 at 4134 Glasgow Drive, North Highlands, California ("Property").
8 Throughout the course of this case, the debtor has asserted that
9 he does not own the Property, he has no interest in the Property,
10 he was merely his nephew's co-signor on the loan the nephew
11 obtained to purchase the Property, and his nephew owns the
12 Property. The debtor so stated in Schedule A filed with the
13 petition on August 23, 2018. Docket 1, Sch. A. The debtor
14 reiterated his position several months later in December 2018 in
15 a letter his attorney sent the trustee. Docket 61, Ex. B.

16 Even after the trustee produced a recorded grant deed and
17 deed of trust which revealed that the debtor held the Property as
18 a joint tenant with his nephew, Docket 27, Exs. B & C, the debtor
19 continued to disavow any interest in or ownership of the
20 Property. Docket 34. In fact, so certain was the debtor that he
21 did not have any interest in or own the Property that he moved to
22 convert this chapter 7 case to a chapter 13 case for the sole
23 purpose of protecting the Property for his nephew. Docket 34 at
24 2:1-2; see also Dockets 37, 39.

25 Based on the trustee's evidence that the debtor held an
26 interest in the Property, the court approved a sale of the
27 debtor's interest to a third-party in December 2019. Docket 44.
28 Three months later, on March 18, 2020, amended Schedules A and C

1 were filed in which the debtor now asserts an interest in the
2 Property and claims an exemption in the Property sale proceeds
3 under C.C.C.P. § 703.140(b)(5), respectively. Dockets 57, 66.

4 The trustee filed an objection to the debtor's claim of
5 exemption on March 30, 2020. Docket 58. The trustee's objection
6 is based on bad faith and equitable estoppel. Id. at 1:28-2:1.
7 A response to the trustee's objection was filed on April 21,
8 2020, Docket 66, and a declaration in support of the response was
9 filed on April 22, 2020. Docket 68. The declaration submitted
10 with the debtor's response is signed by the debtor's nephew and
11 asserts that the nephew and not the debtor owns and has always
12 owned the Property. Docket 68 at 1:21-2:6. The response
13 reiterates the debtor's view that he has no interest in the
14 Property. Dkt. 66 at 2:1 ("In fact, I did not own an interest in
15 the property in my opinion.").

16 A hearing on the trustee's objection was initially set on
17 May 5, 2020, and continued because of serious irregularities with
18 the response, declaration, and the amended schedules that
19 preceded both. In an order filed on April 24, 2020, attorney
20 Mark Hannon and the debtor were each ordered to disclose who
21 prepared and filed each of the aforementioned documents. Docket
22 69. Mr. Hannon and the debtor timely responded. Dockets 72 (Mr.
23 Hannon), 74 (debtor).

24 As suspected, the debtor did not prepare or file the
25 response, declaration, or the amended schedules. Mr. Hannon and
26 the debtor independently confirm in their respective declarations
27 that Mr. Hannon prepared and filed each of the documents. Docket
28 72 at 2:15-17 (Mr. Hannon) ("My staff researched and worked on

1 the Amendments, Response, Declaration and Proof of Service. I
2 approved the documents, except for the proof of service, and
3 asked my staff to file them over the counter."); see also Docket
4 74 at 1:17-18 (debtor) ("I did not prepare any of the papers.
5 Mark Hannon and his workers made all the papers for me to
6 sign."). Problem is, and it is a significant one, Mr. Hannon is
7 not the debtor's attorney of record in this case. That means the
8 response at Docket 66, the declaration at Docket 68, and the
9 amended schedules at Docket 57 are all fugitive documents.

10 The court typically strikes fugitive documents. Doing so in
11 this case, however, would likely result in their refile by the
12 pro se debtor. That, in turn, would necessitate another
13 objection by the trustee which, in turn, would result in undue
14 delay in the administration of the case and unnecessary
15 administrative expense to the estate. Since the response and
16 amended schedules are at least signed by the debtor, and the
17 response incorporates the nephew's declaration, the court will
18 consider the documents that Mr. Hannon prepared and filed for the
19 debtor. The court will deal with Mr. Hannon in a separate order
20 that requires Mr. Hannon to show cause why he should not be
21 sanctioned for filing documents for a debtor in a case in which
22 he is not the debtor's attorney of record.

23 24 Discussion

25 Turning to the debtor's claim of exemption and the trustee's
26 objection to it, generally, when a debtor files bankruptcy, all
27 of the debtor's property becomes property of the bankruptcy
28 estate. See 11 U.S.C. § 541. Federal law provides avenues for a

1 debtor to exempt certain property. See 11 U.S.C. § 522(d).
2 Congress has also authorized states to opt out of the federal
3 bankruptcy exemptions created by Bankruptcy Code § 522(d) which
4 means the federal exemption scheme can be supplanted by states
5 that choose to provide their own exemptions. See 11 U.S.C. §
6 522(b)(2); Granger v. Watson (In re Granger), 754 F.2d 1490, 1492
7 (9th Cir. 1985) (“[A] state that has opted out has considerable
8 freedom in creating exemptions and eligibility requirements for
9 those exemptions.”). California exercised the § 522(b)(2) option
10 to opt out by making the federal bankruptcy exemptions
11 inapplicable in the state. See C.C.C.P. § 703.130.

12 A bankruptcy court construing California exemptions applies
13 a state-law rule of decision. In re Tallerico, 532 B.R. 774, 780
14 (Bankr. E.D. Cal. 2015). In other words, “[l]ike all federal
15 courts when addressing a state-law rule of decision, the
16 bankruptcy court is predicting what the California Supreme Court
17 would rule if it were presented with the question.” Id. In that
18 endeavor, state law governs. Law v. Siegel, 134 S. Ct. 1188,
19 1196-97 (2014) (“when a debtor claims a state-created exemption,
20 the exemption’s scope is determined by state law”); Philips v.
21 Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018); Wolfe
22 v. Jacobson (In re Jacobson), 676 F.3d 1193, 1199 (9th Cir.
23 2012). State law includes state statutory law. Elliott v. Weil
24 (In re Elliott), 523 B.R. 188, 194 (9th Cir. BAP 2014);
25 Kornhauser v. Block (In re Block), 2016 WL 3251406, *3 (9th Cir.
26 BAP 2016). And it includes state equitable law. Gilman, 887
27 F.3d at 966 (citing Gray v. Warfield (In re Gray), 523 B.R. 170,
28 175 (9th Cir. BAP 2014)).

1 California state law allocates the burden of proof to the
2 debtor as the exemption claimant, and that burden remains with
3 the debtor in a bankruptcy case. Diaz v. Kosmala (In re Diaz),
4 547 B.R. 329, 337 (9th Cir. BAP 2016); Tallerico, 532 B.R. at 780
5 (Bankr. E.D. Cal. 2015); In re Pashenee, 531 B.R. 834 (Bankr.
6 E.D. Cal. 2015). So although here the trustee is the objecting
7 party, under Diaz, Tallerico, and Pashenee the burden is on the
8 debtor to prove that he is entitled to the exemption claimed in
9 the Property sale proceeds and not on the trustee to prove that
10 the exemption should be disallowed.

11 One aspect of the debtor's burden of proof is to prove that
12 the exemption is claimed in good faith or, in other words, the
13 exemption claimed is within the parameters of the exemption
14 statutes. In re Gilman, 608 B.R. 714, 723-24 (Bankr. C.D. Cal.
15 2019) (citing and discussing Bertozzi v. Swisher, 27 Cal. App. 2d
16 739 (Ct. App. 1938)).¹ An exemption is not within the parameters
17 of the exemption statutes, and thence is not claimed in good
18 faith, when it is claimed in an effort to protect something other
19 than what the exemption statutes are meant to protect. Id.
20 Bertozzi illustrated this point with its conclusion that a race
21 horse claimed exempt under an exemption statute meant to protect
22 work horses was not an exemption claimed within the letter and
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24
25 ¹The bankruptcy court's opinion in Gilman follows a partial
26 remand in Phillips v. Gilman (In re Gilman), 887 F.3d 956 (9th
27 Cir. 2018), in which the Ninth Circuit instructed the bankruptcy
28 court to determine in the first instance if there was an
equitable basis under California law, including bad faith, to
deny the debtor's homestead exemption. See Gilman, 608 B.R. at
718; Gilman, 887 F.3d at 966.

1 spirit of the statute and therefore one not one claimed in good
2 faith. Id. at 742. The bankruptcy court in Gilman further
3 illustrated this point in the context of California's homestead
4 exemption as follows: "Under Bertozzi, an analogous situation
5 using our facts might be if Debtor claimed a homestead exemption
6 without a good faith intent to reside in the Property, because
7 the pertinent statute protects a debtor's residence, not other
8 properties." Gilman, 608 B.R. at 723-24.

9 As the bankruptcy court in Gilman notes, the debtor's intent
10 in claiming the exemption is a fundamental component of the good
11 faith analysis. Id. at 723. Stated another way, is the debtor's
12 intent to exempt what the exemption statutes are meant to protect
13 or is it to exempt something else? Id. Evidence in this case
14 points to the latter.

15 Exemptions are meant to benefit the exemption claimant and
16 the exemption claimant's property. Bertozzi, 27 Cal. App. 2d at
17 742. Here, however, the debtor derives no benefit from an
18 exemption claimed in property he believes he does not own and
19 which he also believes is owned by his nephew. Viewed in that
20 context, the debtor's claim of an exemption in the Property sale
21 proceeds is an apparent effort by the debtor to protect the
22 Property not for his benefit but for the benefit of his nephew
23 and, thus, an effort by the debtor to protect something the
24 exemption statutes are not meant to protect.² The debtor has
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26 ²This is not implausible and it is consistent with the
27 debtor's conduct earlier in the case when he sought to convert
28 the case to a chapter 13 case to protect the Property for his
nephew.

1 therefore claimed an exemption that is not within the parameters
2 of the exemption statutes and, thus, has not claimed the
3 exemption in the Property sale proceeds in good faith.
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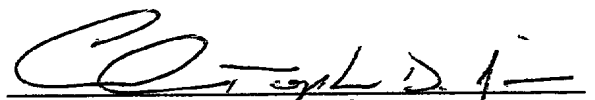
5 Conclusion

6 For the foregoing reasons,

7 IT IS ORDERED that the trustee's objection to the debtor's
8 claim of exemption is sustained and the exemption the debtor
9 claimed under C.C.C.P. § 703.140(b) (5) in the amended schedules
10 filed on March 18, 2020, is disallowed in its entirety.

11 IT IS FURTHER ORDER that the continued hearing on June 2,
12 2020, at 9:30 a.m. is vacated.

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14 **Dated:** June 01, 2020

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16 
17 Christopher D. Jaime, Judge
18 United States Bankruptcy Court
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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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